

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Government.

v.

Case No. 11-20693

ANNETTA POWELL, D-1,

Defendant.

SENTENCE HEARING

BEFORE CHIEF JUDGE GERALD E. ROSEN
United States District Judge
733 US Courthouse & Federal Building
231 W. Lafayette Street
Detroit, Michigan 48226
Tuesday, December 2, 2014

APPEARANCES:

CRAIG WEIER
Assistant United States Attorney
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Detroit, MI 48226
On behalf of the Government.

JAMES C. THOMAS
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WITNESSES

None.

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E X H I B I T S

IDENTIFICATION	MARKED	RECEIVED
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None Marked, Offered or Received

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1 Detroit, Michigan

2 Tuesday, December 2, 2014

3 2:49 p.m.

4 THE CLERK: Now calling case number 11-20693,
5 defendant number one, United States versus Annetta
6 Powell.

7 THE COURT: Good afternoon. Appearances,
8 please.

9 MR. WEIER: If it please the Court, Craig
10 Weier, on behalf of the United States.

11 Also at counsel table is Brian Cuney from the
12 Federal Bureau of Investigation.

13 MR. THOMAS: Your Honor, my name is James
14 Thomas. I'm appearing on behalf of Mrs. Powell who's
15 here on my left.

16 We can we approach?

17 THE COURT: Please.

18 (A discussion was held at the bench)

19 THE COURT: All right.

20 Mr. Thomas, please confirm that you've had the
21 opportunity to review the Presentence Report with
22 Ms. Powell.

23 MR. THOMAS: Your Honor, we have received the
24 Presentence Report. I've reviewed it with her.

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1 We have discussed it on several occasions and have
2 noted it in our Sentencing Memorandum.

3 THE COURT: All right. And, Mr. Weier, for
4 the government?

5 MR. WEIER: Yes. I've reviewed the
6 Presentence Report as well, Your Honor, and we've
7 addressed it in the Sentencing Memorandum as well.

8 THE COURT: All right.

9 The recommended guideline range in the plea
10 agreement was 33 to 41 months; that was based upon an
11 offense level premised upon an amount of loss that was
12 about \$2 million.

13 The Probation Officer, in the preparation of the
14 report, calculated a slightly greater loss -- well, a
15 loss slightly greater than the next level up. The next
16 level up would have been the two, two and-a-half million
17 dollars threshold.

18 Probation calculated the amount of loss at about
19 \$2.6 million or about \$100,000 over.

20 I wanted to give both counsel, since both counsel
21 objected to the amount of loss on the same basis, I
22 wanted to give both counsel an opportunity to address
23 that here on the record.

24 MR. WEIER: Thank you, Your Honor.
25

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1 If I may, for the United States, I can indicate to
2 the Court that I've discussed the matter with Mr.
3 Thomas. And that we are in agreement that to submit the
4 case to the Court on the reduced sentencing guideline
5 range. We're willing to stand behind that reduced
6 range.

7 The reason being that we were unable to determine
8 with any great specificity the loss figures stemming from
9 the transactions identified by the Probation Department
10 in that extra \$500,000 or so losses that they assessed.

11 More specifically, the Probation Department
12 assessed the full amount of the loan in calculating
13 those losses, which I think, absent any other
14 circumstances, might be inappropriate.

15 However, we were not able to specifically identify
16 the collateral offset and the outstanding balance of
17 those loans. So we're standing by the figures in the
18 Rule 11 Plea Agreement.

19 MR. THOMAS: Judge, it was our position that
20 the amount that we had agreed upon was what was readily
21 proveable.

22 And that because of the vagaries of time and
23 questions regarding reimbursement of loss amounts upon
24 sale, that that should be the amount and nothing more.

25

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1 And as a result, we're asking you for a 33 to 41
2 month guideline as was contemplated by the Rule 11 Plea
3 Agreement.

4 THE COURT: All right. I'm going to agree to
5 the guideline range agreed to by the parties in the Rule
6 11 Plea Agreement.

7 The Court's gone through the Presentence Report
8 looking at the relevant conduct referred to by the
9 Probation Officer and the calculation and the amount of
10 loss.

11 And although the Court is not able to say with any
12 degree of certainty that the probation officer was
13 wrong, the Court is not also -- is also not able to say
14 with any degree of certainty that he was right. Some of
15 the numbers are not amenable to precise calculation,
16 unfortunately.

17 So the Court is willing to abide by that agreed
18 upon amount of loss reached by parties. So the
19 beginning guideline range will be 33 to 41 months.

20 I don't think there are any other issues with the
21 Presentence Report, gentlemen?

22 MR. WEIER: No, Your Honor, on behalf of the
23 United States.

24 MR. THOMAS: There are none.
25

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1 THE COURT: Mr. Thomas, allocution on behalf
2 of Ms. Powell.

3 MR. THOMAS: Judge, I should acknowledge first
4 this is a case that has that has been extensively
5 pre-tried.

6 We've have had several conversations with the Court
7 relating to this matter and I know that you know what my
8 feelings are about this particular type of prosecution;
9 specifically as it relates to how we're going to do the
10 sentencing as in this particular case with Ms. Powell.

11 I've submitted a Sentencing Memorandum and
12 significant letters from people in the community who
13 she's dealt with to talk about her as a person.

14 She's had a tough life. She lived in the City of
15 Detroit. She was raised in a home where Mom and Dad
16 both had handicaps. She learned American Sign Language.
17 She was their voice for many years.

18 She is reported by people that she's worked with
19 and her neighbors and friends to be a kind, caring,
20 considerate person, a giving person; you know, the type
21 of person you might have want to have as a friend or
22 neighbor.

23 This is a case where it seems as if she started
24 with the best of intentions and things got away.

25

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1 She's acknowledged and embraced her responsibility
2 for the document fraud and getting people into homes.

3 On one hand, it's the basis upon which there's many
4 abandoned homes in Detroit. I don't know what to blame.
5 I mean do we blame -- do we blame the economy in 2006 or
6 2007 for the fact that they're so many homes that people
7 have walked way from?

8 Or is it the fact that the banks' lending policies
9 were lax and that they weren't monitoring the loan
10 documents as well?

11 Or was it Ms. Powell's part; and that is, being
12 involved in trying to assist these people to get into
13 homes that they may not have qualified for. I think
14 it's a combination of all of those things.

15 I don't want to shirk her responsibility and I
16 don't want it to seem as if she's not accepting her
17 responsibility.

18 But, you know, she put in over a million-five of
19 money that were proceeds of the sales of these
20 properties back into the properties so she could make
21 them habitable.

22 She took people and conducted classes on how it is
23 they could manage the real estate as an investor; albeit
24 they were supposed to be residential homes.

25

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1 She found Section 8 tenants for the homes so that
2 they could lease the homes. And when some of the people
3 lost tenants, she would even help them to find new
4 tenants, get them to come into the homes.

5 So the people that were investing in the homes,
6 albeit improperly, would be able to make their payments
7 and so that they could then build well, which was the
8 big dream we all had in 2006 when the bottom fell out.

9 That is, people who were well intended to put money
10 into their homes realized that they'd over-extended
11 themselves and couldn't pay their mortgages, even
12 without any fraud, were walking away from significant
13 assets that could have appreciated, would have
14 appreciated, had they had the time to continue to make
15 payments, if they had the ability to continue to make
16 their payments except for the fact the economy fell
17 through.

18 Now that being said, she's embraced the fact that
19 she's done something wrong. She has -- and the letters
20 that you've seen acknowledged that to the people that
21 have sent letters on her behalf.

22 I went to a seminar at Wayne State University the
23 other day, you know, Ricardo Hinojosa was there, Jack
24 Recoff was there; they're talking about how much time is
25 too much time.

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1 This morning I got up early and I read an opinion
2 by a judge in the Southern District of New York, Judge
3 Weinstein, who's talking about how it is that we've now
4 got ourselves in the position where people are doing so
5 much time.

6 There's certain sociological theories that say that
7 it isn't amount of time that you give, it is the
8 certainty of punishment.

9 And certainly as we have seen in this case proceed,
10 we knew that the government was on a juggernaut and that
11 there was no way we were going to avoid liability for
12 what it was that happened here.

13 The certainty of punishment is here and we're not
14 asking the Court for a probationary sentence. We think
15 a term of incarceration with guidelines of 33 months may
16 be too long under the circumstances for this particular
17 defendant.

18 I'm going to ask to you vary to 18 months. I'm
19 going to ask you to provide for restitution.

20 The Court asked a question about her business and
21 how it is continuing. She has four locations, she has
22 20 employees, she will be able to pay restitution and
23 she can start to pay that.

24 THE COURT: Who's going to run her business
25 when she's away?

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1 MR. THOMAS: I'm sorry?

2 THE COURT: Who's going to run her business?

3 MR. THOMAS: She has managers at each
4 location, you know. And at each location, she's had
5 extensive training with the managers in the last year
6 and-a-half.

7 And we're certain that she's going to be able to
8 continue the business and that she's going be able to
9 comply with the law.

10 THE COURT: Thank you, Mr. Thomas.

11 Mr. Weier?

12 MR. WEIER: Thank you, Your Honor.

13 I don't think there's been any issue about
14 Ms. Powell's ability to comply with the law. The issue
15 in the case is Ms. Powell's willingness to comply with
16 the law.

17 Mr. Thomas' allocution for Ms. Powell contained a
18 great deal of argument which I called self
19 congratulatory assertions in my sentencing memo for a
20 reason.

21 Ms. Powell was doing no one any favors other than
22 enriching herself. The assertion that Ms. Powell was
23 trying to put people into houses they couldn't afford is
24 not accurate.

25

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1 Miss Powell was selling houses to people as
2 investment properties. Ms. Powell was selling two or
3 four or six or ten houses to people who couldn't qualify
4 for one mortgage.

5 Ms. Powell was representing to banks that the
6 properties were worth far more than they were. And,
7 yes, if she put some money into the properties -- I
8 certainly have not seen any evidence that she put 1.5
9 million in the properties. If she did, that money came
10 from the lending institutions.

11 Ms. Powell didn't sacrifice anything. She used the
12 money from the loans to improve the properties.

13 We've had --we've had some issues and we've had
14 some issues with Ms. Powell's business as it currently
15 is operated or was at least operated while Ms. Powell
16 was on bond.

17 We demonstrated to the Court with an affidavit from
18 the Special Agent of the IRS that Ms. Powell -- and I
19 detailed this and I attached the affidavits in my
20 sentencing memo.

21 This defendant is not a defendant who is incapable
22 of complying with the law; she's certainly capable of
23 complying with the law. But in 2012 while this case was
24 pending, she committed another felony while on bond. We
25 didn't prosecute her for that.

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1 The IRS has chosen, they tell me, to pursue that
2 matter administratively for reasons that are not
3 entirely clear.

4 But this is not a person who has shown the Court by
5 post-offense conduct that she will maintain a law
6 abiding -- a law abiding future. And for that reason, I
7 don't believe that Ms. Powell deserves leniency.

8 There's, as the Court is aware, a very big
9 discussion in the criminal justice community now about
10 lengths of sentences. I appreciate that. We have more
11 prisoners in this country than any other country in the
12 world, per capita. And it doesn't matter to the Court
13 what my personal opinion about that is.

14 But I will say that there are still sentencing
15 guidelines and those guidelines are advisory and those
16 guidelines have a basis.

17 And the kinds of offenses that have created the
18 numbers of prisoners that we're seeing in this country
19 are not bank fraud offenses; I think the Court and Mr.
20 Thomas are well aware of that.

21 This is a case where Ms. Powell broke the law not
22 once or twice, but for six years. She emailed clients
23 that they wouldn't -- if they had to tell the truth, you
24 wouldn't get mortgages.

25

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1 She emailed clients as late as 2010 when she was
2 trying to resurrect her business.

3 That certain mortgage brokers would no longer deal
4 with her because they would be liable for false
5 statements in the applications because of the licensing
6 laws.

7 This is somebody who not only broke the law, but
8 did it consciously for a long period of time, was
9 raided, the investigation continued, she was indicted.

10 As the case was pending, she continued to break the
11 law. And to me, Your Honor, this is not a defendant who
12 should be asking for leniency. That's all.

13 THE COURT: Okay. Thank you.

14 Ms. Powell, do you wish to address the Court?

15 MR. THOMAS: Judge as it relates -- may I have
16 rebuttal just for a second?

17 THE COURT: I'm more interested --

18 MR. THOMAS: Should I have any further
19 argument on the tax issue?

20 THE COURT: I'm really more interested in
21 hearing from Ms. Powell.

22 THE DEFENDANT: I definitely accept full
23 responsibility for what I did.

24 And during my time, you know, I learned personal
25 development and, you know, just learning how to be a

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1 better person.

2 THE COURT: Ms. Powell, may I ask you a couple
3 questions that really arise out of the letters that I've
4 read?

5 What lawyers say about their clients, what the
6 prosecutors says about the defendant, I'm always
7 interested in knowing, interested in hearing.

8 But I'm much more interested in what the defendant
9 says about herself and what the people who know her say
10 about her and, of course, the criminal conduct which I
11 have to consider.

12 You have overcome much in your life. Mr. Thomas is
13 certainly right about that. And you've had, until this
14 extended criminal activity, which it is, you've had a
15 very admirable life.

16 And everything in the letters that I read from your
17 family, from your mother, who I found that -- your Mom's
18 letter I found really a remarkable statement, talking
19 about somebody who has overcome her disabilities. This
20 is a beautiful letter, remarkably articulate and
21 eloquent about you.

22 I was also struck by the letter from the contractor
23 who you worked with, who apparently began on a -- you
24 had an interesting relationship at first.

25

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1 Apparently, you were tough with him, but you became
2 friends, Mr. Wolf, but, apparently, you became friends.
3 He talks about what a good heart you have and a good
4 person.

5 But, on the other hand, the picture I get is a very
6 strong-willed woman who's going to get her way no matter
7 what, even if it makes -- even if it may be breaking the
8 law and that's what I'm concerned about going forward.

9 I'm concerned about that when you believe that
10 you're doing something for a greater good. You told me
11 in your letter you believed that you were trying to help
12 the City of Detroit and help people, put people into
13 houses. You, obviously, were also trying to help
14 yourself.

15 And I'm concerned that maybe you have blinders on
16 when you're trying to help others and trying to help
17 yourself and you're looking for shortcuts around the
18 law. That's what it looks to me like happened here.

19 It was easy, there was temptation. You thought you
20 were doing well by doing good. And you really weren't
21 too concerned about the moral hazard that you were
22 creating for yourself and for others, and weren't too
23 concerned about the fact that you were, you know,
24 cutting corners on the law. And I'm concerned that
25 maybe that hasn't changed.

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1 What could you tell me going forward?

2 THE DEFENDANT: Well, moving forward, you
3 know, in real estate -- and, you know, it was just a
4 matter of I didn't take the time to learn it. You
5 have -- you know, the wrong people around you, you know,
6 doing the same thing and you think it's okay. Far as
7 me -- you said that you felt like, you know, I was, you
8 know, trying to make money for me.

9 At the end of the day, when I closed on those
10 houses, I could have took that money and ran. But, you
11 know -- but I went back and I fixed those houses up.

12 So, you know, I understand what everything
13 everybody is saying. Bottom line is when we closed, I
14 had the money. I could have took the money and did
15 other things with it. But I still took the time to go
16 back and renovate those houses the correct way like I
17 was supposed to.

18 You know with Section 8, in order for you to even
19 put a tenant in there, it had to be newly renovated. So
20 at the same time, I look at that.

21 As far as taxes, I got into taxes when -- you know,
22 just -- based off, you know, franchise said here, you do
23 the taxes. I failed because I never took the time to
24 really, you know, learn. You got to read about --

25

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1 THE COURT: What are you going to do when you
2 finish your sentence?

3 THE DEFENDANT: When I finish my sentence?

4 THE COURT: What can you -- how do I know that
5 you're not going to fall into the next scam?

6 THE DEFENDANT: There -- because one thing, I
7 made a commitment to myself that I would not jeopardize
8 my integrity for money, ego. It's just not worth it.
9 You're dealing with -- it's not worth it. You're
10 dealing with people out there. It's just not worth it.
11 I know, you know, its -- it ain't worth it.

12 It's not worth your freedom, it's not worth, you,
13 know, having to be, you know, away. It's just not worth
14 it. It's not worth it.

15 But when I step out -- I mean -- I know you don't
16 see it, but -- and I mean I have over 300,000 people
17 that follow me on social media. It's all about
18 inspiring people, letting people, you know, that
19 committing crimes is not worth it. It's just not worth
20 it. It's not worth it.

21 So I plan to step out and be a better, a better
22 person then I was yesterday.

23 THE COURT: Well, I don't have a crystal ball;
24 and I believe that you want to be.

25

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1 But I hope that you're not going to be easily
2 tempted into the next scam that comes along, because
3 you're a wilful person and that's a good thing.

4 People who are wilful persevere and they are
5 tenacious, but it's important that you maintain a
6 perspective and make sure that you're not just plowing
7 ahead and are yielding to the next temptation that comes
8 along.

9 All right. As I've indicated, I'm going to accept
10 the plea agreement and accept the guideline range of 33
11 to 41 months as a beginning point.

12 I do find some basis for variance here, given --
13 some basis for variance here, given Ms. Powell's -- the
14 complete picture of Miss Powell's life.

15 She doesn't pose a threat to anyone. I don't think
16 she poses a threat to the communities, certainly not any
17 kind of threat of violence.

18 I am a little bit concerned about the blind spots
19 she has; and she can benefit from some further training
20 and education if she's going to remain in the real
21 estate field or the tax field.

22 She is not a threat to herself or others. She
23 doesn't do drugs. She's got good family support.

24 And unlike many defendants who come before the
25 Court, she is a good candidate to pay the restitution

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1 obligation that I'm going to order. And I hope that she
2 will -- I hope that she will commit, as she says she
3 will, to meeting the requirements of the restitution
4 obligation. So I am going to do a slight variance.

5 In the matter of the United States of America
6 versus Annetta Powell, criminal docket number 11-20693,
7 with respect to Count One of the indictment, which is
8 the count of conviction here, it is the judgment of this
9 Court, after considering the sentencing guidelines and
10 the factors contained in the sentencing statute, as well
11 as those factors which the Court has discussed here on
12 the record with the defendant and counsel, that the
13 defendant be committed to the custody of the Bureau of
14 Prisons for a term of 24 months.

15 It is further ordered that the defendant pay a
16 special assessment of \$100 for each count of conviction,
17 which will be due immediately.

18 Restitution, as I've discussed here, is imposed by
19 the Court in the amount of \$2,093,366.70, which I
20 believe is the agreed upon amount of restitution.

21 MR. THOMAS: It's in the Rule 11.

22 PROBATION OFFICER: Your Honor, I was just
23 thinking I think that might be a typo. If the Court
24 will give me one minute?

25

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1 THE COURT: I thought that was the amount that
2 was in the plea agreement.

3 PROBATION OFFICER: Russ has initially
4 921,601.

5 MR. WEIER: That was long ago.

6 THE COURT: That wasn't correct.

7 MR. THOMAS: That was the typo.

8 THE COURT: That was not correct.

9 I am going to waive, however, the imposition of a
10 fine or costs of incarceration, costs of supervision,
11 due to the defendant's relative lack of financial
12 resources compared to the restitution obligation that
13 the Court has now ordered.

14 Court believes that rather than imposing these
15 fines and costs, it would be better for the defendant to
16 devote her resources to paying the restitution amount.

17 While the defendant is in custody, she will
18 participate in the Inmate Financial Responsibility
19 Program. The Court is aware of the requirements of the
20 program and approves the payment schedules and orders
21 the defendant's compliance.

22 I've reviewed the defendant's health and substance
23 abuse history. There is none, so I am going to suspend
24 the mandatory drug testing, based upon my determination
25 that the defendant poses little or no risk of future

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1 substance abuse.

2 While on supervision, the defendant will abide by
3 the standard conditions of supervised release which have
4 been adopted by this Court as well as the following
5 special conditions.

6 Due to the restitution obligation, the defendant
7 will not incur any new credit charges or open any
8 additional lines of credit without the approval her
9 probation officer unless she's in compliance with the
10 payment schedule.

11 She will provide her probation officer with access
12 to any requested financial information. She will make
13 monthly installments payments on any remaining balance
14 of her restitution and special assessment at a rate and
15 schedule recommended by her probation officer and
16 approved by the Court.

17 Due to the defendant's back tax obligation, she
18 will make arrangements with the Internal Revenue Service
19 regarding a monthly payment plan regarding the payment
20 of back taxes, plus any taxes and interest that may
21 accrue.

22 The defendant is to provide a payment arrangement
23 schedule with IRS to her probation officer. All right.

24 MR. THOMAS: Judge, just for the record,
25

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1 she's taking steps towards doing that already. She will
2 follow through.

3 THE DEFENDANT: I paid like a majority of it.

4 THE COURT: All right. Ms. Powell, I have now
5 accepted your plea agreement, sentenced you in
6 accordance with it.

7 And under the terms of your plea agreement, you
8 agreed that if I were to accept it and sentence you in
9 accordance with it, you would waive or give up any right
10 that you had to appeal either your conviction or your
11 sentence. So because I have now done this, you have no
12 right to appeal either your conviction or your sentence.
13 Okay?

14 MR. WEIER: Your Honor, what period of
15 supervised release?

16 THE COURT: I thought I said two years, didn't
17 I? I may have skipped over that. Two years supervised
18 release. Thank you.

19 MR. WEIER: Thank you.

20 THE COURT: I've received a report from
21 Pretrial that the defendant's in full compliance with
22 her pretrial bond.

23 And, Mr. Weier, I assume you've no objection
24 allowing her to remain on bond --

25

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1 MR. WEIER: That's correct.

2 THE COURT: -- until she's designated.

3 MR. WEIER: That's correct.

4 We've also discussed -- parties have discussed a
5 report date extension already.

6 Mr. Thomas is going to ask the Court to extend her
7 report date until the end of February. I don't object
8 to that.

9 THE COURT: That's fine.

10 MR. THOMAS: Thank you, judge.

11 THE COURT: In the meantime, Ms. Powell --

12 THE DEFENDANT: Thank you so much. I
13 appreciate it.

14 THE COURT: All right. Very good.
15 Thank you.

16 (This hearing concluded at 3:22 p.m.)

17

18 CERTIFICATE OF COURT REPORTER

19

20 I certify that the foregoing is a correct transcript
21 from reported proceedings in the above-entitled
22 matter.

23

24

25 s/Carol S. Sapala, FCRR, RMR February 5, 2015